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12 February 2004

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Your Ref : 427937 NJC

Examiner's report no. 2 on patent application no. 56596/00
by FISHER & PAYKEL HEALTHCARE LIMITED

Last proposed amendment no. 1

Dear Madam/Sir,

Thank you for the reply of 27 January 2004 to the last report. My report is based on the specification as if amended by the statement of proposed amendments filed with that reply and dated the same. I have considered it and believe that there are lawful grounds of objection to the application as proposed to be amended. These grounds of objection are:

3. The invention defined in independent claim 1 at least is not novel or inventive when compared with prior art document GB 1 238 649 (VENN et al)* that discloses all the essential features of the invention claimed.

This citation discloses a device for controlling gas flow comprising a flap valve (38) mounted on an axially movable carrier (24); the valve is configured to allow the inhalation of gas and directs the patient's exhalation to auxiliary outlets (27).

NOTE: There is a current postponement of acceptance in place. If you overcome all other objections before the expiration of that postponement, the Commissioner will only accept the application at that time if you have filed a clear and unambiguous statement requesting the withdrawal of that postponement. Otherwise, a further adverse report will be issued.

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*Cited in the search report of FR 2 798 858 (published after the first report was issued).

You have until 12 November 2004 to overcome all my objection(s) otherwise your application will lapse.

Yours faithfully,



XAVIER GISZ
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